

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04/04/2003

CORAM

THE HONOURABLE MR. JUSTICE E. PADMANABHAN

W.P. NO. 20713 OF 1998

The Management of
Kutty Flush Doors & Furniture
Company Pvt. Ltd.
Poonamallee High Road
Koyambedu, Madras 107. .. Petitioner

-Vs-

1. The Presiding Officer
II Addl. Labour Court
Madras.

2. Mr. G.Mathivanan .. Respondents

Petition filed under Article 226 of The Constitution of India praying
this Court to issue a Writ of Certiorarified Mandamus as stated therein.

For Petitioner : Mr. S.Ravindran, for
M/s. T.S. Gopalan & Co.

For Respondents : Mr. S.Sureshkumar, for R2

:ORDER

1. The writ petitioner has prayed for the issue of a writ of certiorarified mandamus to call for the records of the first respondent in I.A. No.266/98 in I.D. No.469/95 and quash the order dated 6.10.98 and direct the first respondent to allow I.A. No.266/98 and pass such further or other orders.

2. Heard Mr.S.Ravindran, learned counsel appearing for M/s.T.S. Gopalan & Co., appearing for the petitioner and Mr.S.Suresh Kumar, learned counsel appearing for the 2nd respondent. With the consent of counsel on either side, the writ petition itself is taken up for final disposal.

3. As against the 2nd respondent, the writ petitioner management, for certain financial irregularities alleged to have been committed by the 2nd respondent and various misconduct, framed charges, conducted domestic enquiry and based upon the enquiry officer's findings, the 2 nd respondent was dismissed from service. As against the said dismissal dated 5.1.94, the 2nd respondent raised an industrial dispute before the first respondent Labour Court. The 2nd respondent filed a claim statement contending that enquiry against him was not fair and proper, besides, contending that the punishment is

disproportionate. It is also not in dispute that one of the issues being that whether domestic enquiry was conducted fairly and properly. It is also the stand of the writ petitioner management that in the event of the first respondent Labour Court holding that the domestic enquiry is not fair and proper, the management has expressed its readiness and willingness to let in evidence to substantiate the charges against the workman. To this extent there is no controversy.

4. Therefore, it is obligatory on the part of the first respondent Labour Court to consider whether the domestic enquiry was conducted fairly and properly before taking up other issues on merit. To this extent also, there is no controversy.

5. The 2nd respondent workman has filed proof affidavit purporting to be his chief examination during July 1997 and pleaded certain infirmities in the domestic enquiry held against him. According to the petitioner, had the 2nd respondent workman been examined before the first respondent Labour Court, the petitioner could have cross-examined him with respect to the preliminary issue as to whether the domestic enquiry was fair and proper.

6. As the 2nd respondent has filed proof affidavit purporting to be his chief examination, the writ petitioner management moved I.A. No.26 6/98 praying the first respondent Labour Court to delete Paragraph 8 (g), ground Nos. 21, 25, 26, 29, 31 & 32 and averments made in pages 12 and 13 of the proof affidavit, as the said paragraphs relate to the merits of the charges and the findings rendered and it is not in respect of the preliminary issue. The said application was resisted by the 2nd respondent by filing a counter. The Labour Court by order dated 6.10.98 dismissed the interlocutory application, holding that it is not necessary to order striking portion of the proof affidavit, which is the proof affidavit filed by the 2nd respondent workman. Challenging the same, the present writ petition has been filed.

7. The only point that arises for consideration in this writ petition is :-
"Whether a writ of mandamus as prayed for has to be issued ? and Whether the portions referred to by the writ petitioner in the proof affidavit should be ordered to be deleted ?"

8. When a preliminary objection has been raised with respect to the issue, namely, whether the enquiry is fair and proper, the first respondent Labour Court has to confine itself and record a finding whether the enquiry is fair and proper. If for any reason the Labour Court comes to the conclusion that the enquiry is not fair and proper, it has to afford an opportunity to the management to let in evidence to substantiate the charges before it as the management has come forward with a specific statement in this respect. If the finding is that the domestic enquiry has been fair and proper, then the Labour Court has to proceed differently.

9. In BHARAT FORGE COMPANY VS. A.B. ZODGE & ANOTHER reported in 1996 (4) SCC 374, it has been held that a domestic enquiry is vitiated either for non-compliance of rules or for perversity, the employer has got a right to adduce evidence, which is well recognised and the employer is entitled to let in evidence before the Tribunal. The Apex Court in that context held thus :-
"7. A domestic enquiry may be vitiated either for non-compliance of rules of natural justice or for perversity. Disciplinary action taken on the basis of a vitiated enquiry does not stand on a better footing than a disciplinary action with no enquiry. The right of the employer to adduce evidence in both the situations is well recognised. In this connection, reference may be made

to the decisions of this Court in Workmen V. Motipur Sugar Factory (P) Ltd., State Bank of India v. R.K.Jain, Delhi Cloth and General Mills Co. V. Ludh Budh Singh and Firestone Tyre Co. Case. The stage at which the employer should ask for permission to adduce additional evidence to justify the disciplinary action on merits was indicated by this Court in Delhi Cloth and General Mills case. In Shankar Chakravarthi case, the contention that in every case of disciplinary action coming before the Tribunal, the Tribunal as a matter of law must frame preliminary issue and proceed to see the validity or otherwise of the enquiry and then serve a fresh notice on the employer by calling him to adduce further evidence to sustain the charges, if the employer chooses to do so, by relying on the decision of this Court in the case of Cooper Engineering Ltd., has not been accepted. The view expressed in Delhi Cloth Mill case that before the proceedings are closed, an opportunity to adduce evidence would be given if a suitable request for such opportunity is made by the employer to the Tribunal, has been reiterated in Shankar Chakravarthi case after observing that on the question as to the stage as to when leave to adduce further evidence is to be sought for, the decision of this Court in Cooper Engineering Ltd., has not overruled the decision of this Court in Delhi Cloth Mill case. There is no dispute in the present case that before the closure of the proceedings before the Tribunal, prayer was made by the employer to lead evidence in support of the impugned order of dismissal. Hence, denial of the opportunity to the employer to lead evidence before the Tribunal in support of the order of dismissal cannot be justified."

10. In the light of the pronouncement of the Apex Court, it is clear that first the preliminary issue has to be decided and only thereafter the Labour Court has to proceed further consequentially. At the stage at which the Labour Court is required to decide the preliminary issue, it is not at all required for the workman to let in evidence with respect to the merits of the claim before the Labour Court, since the Labour Court has to decide the preliminary issue at the first instance and, thereafter only it is required to take up the other issues.

11. In COOPER ENGINEERING LTD. VS. P.P. MUNDHE reported in 1975 (2) SCC 661, the Supreme Court, while applying the earlier judgment in MANAGEMENT OF RITZ THEATER (P) LTD. VS. ITS WORKMEN, the Apex Court held thus :-

"10. In Management of Ritz Theatre (P) Ltd. v. Workmen, this Court was required to deal with a rather ingenious argument. It was contended in that case by the workmen, in support of the tribunal's decision, that since the management at the very commencement of the trial before the Tribunal adduced evidence with regard to the merits of the case it should be held that it had given up its claim to the propriety or validity of the domestic enquiry.

While repelling this argument this Court made some significant observations:

In enquiries of this kind, the first question which the Tribunal has to consider is whether a proper enquiry has been held or not. Logically, it is only where the Tribunal is satisfied that a proper enquiry has not been held or that the enquiry having been held properly the finding recorded at such an enquiry are perverse, that the Tribunal derives jurisdiction to deal with the merits of the dispute

If the view taken by the Tribunal was held to be correct, it would lead to this anomaly that the employer would be precluded from justifying the dismissal of his employee by leading additional evidence unless he takes the risk of inviting the Tribunal to deal with the merits for itself, because as

soon as he asks for permission to lead additional evidence, it would follow that he gives up his stand based on the holding of the domestic enquiry. Otherwise, it may have to be held that in all such cases no evidence should be led on the merits unless the issue about the enquiry is tried as a preliminary issue. If the finding on that preliminary issue is in favour of the employer, then, no additional evidence need be cited by the employer; if the finding on the said issue is against him, permission will have to be given to the employer to cite additional evidence."

* * * *

22. We are, therefore, clearly of opinion that when a case of dismissal or discharge of an employee is referred for industrial adjudication the labour court should first decide as a preliminary issue whether the domestic enquiry has violated the principles of natural justice. When there is no domestic enquiry or defective enquiry is admitted by the employer, there will be no difficulty. But when the matter is in controversy between the parties that question must be decided as a preliminary issue. On that decision being pronounced it will be for the management to decide whether it will adduce any evidence before the labour court."

12. In MADURAI-DEVAKOTTAI TRANSPORT PRIVATE LIMITED VS. LABOUR COURT, MADURAI & ANOTHER reported in 1976 (2) LLJ 447, a Division Bench of this Court held thus :-

"But it is clear that we have got to tell the Presiding Officer, Labour Court, to follow the proper procedure as envisaged by Cooper Engineering Ltd. Vs. P.P. Mundhe (1975 II LLJ 379): (1975) 48 FJR 152. When as a result of a domestic enquiry, there is a dismissal or removal from service of a workman and the matter takes the shape of an industrial dispute, the Presiding Officer has first to see whether the domestic enquiry was properly held in accordance with the norms of the principles of natural justice and if there was any defect or violation of such principles of natural justice. Of course, when this question itself is in controversy, the Presiding Officer will be justified in taking evidence confined to that question. The complaint before us is that, without adopting that course, and satisfying himself whether the domestic enquiry was proper in that sense, the Presiding Officer has called upon the parties to adduce evidence on the merits. If that is so, this will be erroneous. We direct the Presiding Officer to follow the procedure as laid down in Cooper Engineering Ltd. Vs. P.P. Mundhe, (supra) before proceeding further."

13. In KSRTC, BANGALORE VS. JOHN D'SOUZA & ANOTHER reported in 1995 L & IC 1119 @ 1122, the Karnataka High Court held where the domestic enquiry is found to have been properly held, neither the employee nor the employee shall have the right to produce further evidence before the Labour Court to support or demolish the findings recorded nor to sustain the quantum of punishment imposed as a result of the domestic enquiry.

14. A Division Bench of this Court in GNANESHWAR ALUMINIUM FACTORY VS. INDUSTRIAL TRIBUNAL, MADRAS, reported in 1983 L & IC 288 @ 290-91 laid down that it would not be permissible for the Labour Court to permit the employee to adduce evidence before it to sustain the action of dismissal or discharge.

15. Therefore, it follows that with respect to preliminary issue, the parties have to confine the evidence as to where there has been a fair and just domestic enquiry alone and they shall not be permitted to let in evidence with respect to the merits of the charge or misconduct for which proceedings came

to be initiated and punishment of dismissal or removal came to be imposed.

16. It is made clear that it is not for the Labour Court to record evidence or subject the workman either for cross-examination or that matter allow chief examination with respect to the merits of the charges or findings of the domestic enquiry officer at this stage. Hence, it cannot be said that the interlocutory application filed by the management is without merits.

17. However, instead of quashing the particular paragraphs pointed out by the writ petitioner management in the affidavit of evidence, this Court directs the Labour Court not to refer to the said paragraphs as they relate to merits of the charges, but decide the preliminary issue as to whether the enquiry was conducted fairly and properly without referring to the said paragraphs. This course will be fair and just less it could be said that hyper-technicalities has been allowed to prevail.

18. In the circumstances, the first respondent Labour Court is directed not to take into consideration of the proof affidavit filed by the 2nd respondent workman with respect to the merits of the case, but confine its consideration in respect of the preliminary issue at this stage. The above direction will serve the purpose. This writ petition is ordered in the above terms. The parties shall bear their respective costs.

Index : Yes

Internet : Yes

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To

1. The Presiding Officer

II Addl. Labour Court

Madras.

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